



United States Government
NATIONAL LABOR RELATIONS BOARD
REGION 6

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March 20, 2008

Re: M & M Sheet Metal & Steel
Fabricators, Inc.
[Case 6-RM-729](#)

[Charles A. Caffrey, Esquire](#)
[454 Pine Street, 2nd Fl.](#)
[Williamsport, PA 17701](#)

[Dear Mr. Caffrey:](#)

Your client's petition seeking an election among certain employees of the Employer has been carefully investigated and considered.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing the instant petition for the following reasons:

The instant petition, which was filed on May 29, 2007, as well as unfair labor practice charges which had blocked the processing of the petition, raised a number of issues including whether the Employer is a construction industry employer and whether a question concerning representation exists as to the unit of employees involved herein. In the Regional Director's Decision and Direction of Election issued on February 21, 2008, I concluded, inter alia, that it had not been established that the Employer is still engaged primarily in the building and construction industry and therefore, a Section 8(f) relationship could not exist between the parties. I also concluded that the demand of Sheet Metal Workers International Association Local #44, AFL-CIO (herein referred to as the Union) to represent the employees, the Union's efforts to compel the Employer to sign a contract obtained in interest arbitration, and the Union's assertion of majority status raised a question concerning representation. Finally, I concluded that there is no contract bar to the instant petition. Accordingly, I directed that an election be held with respect to the instant petition, which was scheduled for March 19, 2008. On March 5, 2008, the Union filed a Request for Review of the Decision and Direction of Election.

In the afternoon on March 18, 2008, the Board denied the Union's Request for Review. Also, in the afternoon on March 18, 2008, the Union filed a disclaimer of interest in representing the employees in the unit, a copy of which is attached hereto. Therein, in addition to immediately disclaiming interest in representing the unit, the Union requested that the election, which was scheduled to be held the following day, be cancelled. In support of its request, the Union irrevocably agreed to not take any action seeking to enforce the interest arbitration decision which had issued on June 11, 2007. In addition, the Union also agreed that, during the one-year period beginning on March 14, 2008, it will not seek recognition as the collective bargaining

representative of the employees involved herein or picket or engage in any other conduct described in Section 8(b)(7) of the Act for recognitional purposes as to this unit of employees.

Under these circumstances, no question presently exists concerning the representation of such employees, no purpose would be served in conducting the election and, therefore, I cancelled it.

In accordance with the Union's disclaimer, any petition filed by the Union within 12 months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event the Union makes a claim for recognition upon the employer within 12 months from this date involving the same or substantially the same unit, a motion by the Employer requesting reinstatement of this petition will be entertained. Campos Dairy Products, Ltd., 107 NLRB 715 (1954).

Your Right to Obtain a Review of Dismissal Action: Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, any party may obtain a review of this action by filing a request for review with the Executive Secretary of the National Labor Relations Board at 1099 – 14th Street, NW, Washington, DC 20570-0001. A request for review may not be filed by facsimile. You may, however, file a request for review electronically via the Internet in accordance with instructions previously provided to the parties. Those instructions may also be found at the Agency's Internet website at www.nlr.gov under "E-Gov". If you file a request for review, you must also send a copy to the other parties to this proceeding and to me in the same or faster manner as that used to serve the Board. Also, please note the following:

Request for Review Due date: The request for review must be received by the Executive Secretary for the Board in Washington, DC by the close of business at **5:00 p.m. EST (EDT)** on **April 3, 2008**. However, if you mail the request for review, it will be considered timely if it is postmarked no later than one day before the due date.

Extension of Time to File Request for Review: Upon good cause shown, however, the Board may grant special permission for a longer period within which to file a request for review. Any request for an extension of time may be filed in writing, by facsimile or electronically via the Internet, but must be received in Washington, DC no later than the request for review due date indicated above. A copy must be sent to each of the parties to this proceeding and to me in the same or faster manner as that used to serve the Board.

Request for Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension of time must include a statement as to the manner of service on the other parties to this proceeding and on me.

Very truly yours,

Gerald Kobell
Regional Director

SEE PAGE 3 FOR PARTIES RECEIVING COPIES:

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cc:

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 - 14th Street, N.W.
Washington, DC 20570-0001

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